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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 23, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; and LIEUTENANT
GENERAL SCOTT A. SPELLMON, in
his official capacity as the Commanding
General and Chief of Engineers of the
United States Army Corps of Engineers,

Defendants.

Nos. 4:21-CV-05152-SAB

ORDER OF DISMISSAL

Before the Court is the parties' Joint Motion for Dismissal Without Prejudice, ECF No. 45. The parties indicate they have executed a Settlement Agreement. They ask that the Court dismiss the claims in this matter and retain jurisdiction to resolve disputes pertaining to the Settlement Agreement. The Court finds the Settlement Agreement is reasonable and good cause exists to enter it into the record and dismiss the case without prejudice.

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ORDER OF DISMISSAL *1

Accordingly, IT IS HEREBY ORDERED:

1. The parties' Joint Motion for Dismissal Without

Prejudice, ECF No. 45, is **GRANTED**. The above-captioned case and all claims and causes of action therein are **DISMISSED without prejudice**.

2. Subject to and in accordance with paragraph 10(b) of the above

referenced Settlement Agreement, which is attached to this Order, this Court shall retain jurisdiction over this matter for the purpose of resolving those disputes for which Plaintiff Columbia Riverkeeper or Defendants, the United States Army Corps of Engineers and its Commanding General and Chief of Engineers, may petition the Court. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter this Order, to provide copies to counsel, and **close** the file.

DATED this 23rd day of March 2023.



Stanley A. Sestan

Stanley A. Bastian
Chief United States District Judge

ORDER OF DISMISSAL *2

1 SETTLEMENT AGREEMENT

2 This Settlement Agreement (“Settlement Agreement”) is made by and
3 between Columbia Riverkeeper (“Riverkeeper”) and the United States Army Corps
4 of Engineers and Lieutenant General Scott A. Spellmon, in his official capacity as
5 the Commanding General and Chief of Engineers of the United States Army Corps
6 of Engineers (collectively, “Corps” or “Defendants”). In this Settlement
7 Agreement, Riverkeeper and the Corps may collectively be referred to as “Parties”
8 and may be referred to individually as a “Party.”

9 WHEREAS, on December 8, 2021, Plaintiff filed in separate federal district
10 courts two related Complaints, one in the United States District Court for the
11 Eastern District of Washington (*Columbia Riverkeeper v. U.S. Army Corps of*
12 *Engineers, et al.*, E.D. Wash. No. 4:21-CV-05152-SAB) and one in the United
13 States District Court for the District of Oregon (*Columbia Riverkeeper v. U.S.*
14 *Army Corps of Engineers, et al.*, D. Or. No. 2:21-CV-1777).

15 WHEREAS, the Complaints allege that the Corps discharges pollutants from
16 three dams, The Dalles dam, the John Day dam, and the McNary dam, without the
17 authorization of National Pollutant Discharge Elimination System (“NPDES”)
18 permits in violation of section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C.
19 § 1311(a);

20 WHEREAS, the Complaint filed in the Eastern District of Washington

1 addresses alleged discharges of pollutants from The Dalles dam and alleged
2 discharges of pollutants from sources located in Washington at the John Day and
3 McNary dams;

4 WHEREAS, the Complaint filed in the District of Oregon addresses alleged
5 discharges of pollutants from sources located in Oregon at the John Day and
6 McNary dams;

7 WHEREAS, both Complaints seek similar declaratory and injunctive relief
8 and an award of Riverkeeper's litigation costs as authorized by section 505(d) of
9 the CWA, 33 U.S.C. § 1365(d);

10 WHEREAS, on January 28, 2022, Riverkeeper filed a Motion to Transfer
11 with the Judicial Panel on Multidistrict Litigation ("Panel"), which the Corps did
12 not oppose;

13 WHEREAS, on April 8, 2022, the Panel denied the Motion to Transfer;

14 WHEREAS, on April 27, 2022, the Corps filed a Consent Motion to
15 Transfer the District of Oregon case to the Eastern District of Washington;

16 WHEREAS, on April 28, 2022, the District Court for the District of Oregon
17 granted that Consent Motion;

18 WHEREAS, the transferred case was assigned to the Honorable Chief
19 District Judge Stanley A. Bastian under E.D. Wash. Case No. 4:22-CV-05056-
20 SAB;

1 WHEREAS, on May 10, 2022, the Parties jointly moved to consolidate the
2 two cases then pending in the Eastern District of Washington;

3 WHEREAS, the District Court for the Eastern District of Washington
4 granted the motion later that day, ordered that E.D. Wash. Case No. 4:22-CV-
5 05056-SAB be consolidated into E.D. Wash. Case No. 4:21-CV-05152-SAB,
6 closed E.D. Wash. Case No. 4:22-CV-05056-SAB, and ordered that all further
7 filings be submitted in E.D. Wash. Case No. 4:21-CV-05152-SAB;

8 WHEREAS, this Settlement Agreement resolves both of the consolidated
9 cases, collectively and individually;

10 WHEREAS, on December 15, 2022, EPA issued NPDES permits for all
11 three dams at issue (i.e., The Dalles dam, the John Day dam, and the McNary
12 dam);

13 WHEREAS, EPA’s NPDES permits address discharges from the three
14 dams to the Columbia River within Washington State;

15 WHEREAS, Plaintiff alleges that two of the dams at issue—the John Day
16 Dam and the McNary Dam—also discharge to the Columbia River within Oregon
17 State, that those discharges are not yet authorized by NPDES permits, and that the
18 Oregon Department of Environmental Quality (“Oregon DEQ”) is the NPDES
19 permitting agency for such discharges to waters within the State of Oregon;

20 WHEREAS, Defendants have in place a Spill Prevention Control and

1 Countermeasure (“SPCC”) plan at the John Day and McNary dams, which plans
2 address oil spill prevention, preparedness, and response intended to prevent or
3 minimize oil spills to navigable waters and adjoining shorelines, and the Corps
4 conducts annual drills intended to ensure that it has appropriate capability to
5 respond to such spills;

6 WHEREAS, in 2014, Riverkeeper, the U.S. Army Corps of Engineers, and
7 Lieutenant General Thomas Bostick, in his official capacity at that time as
8 Commanding General of the U.S. Army Corps of Engineers, entered into an
9 agreement (“2014 Agreement”) that addressed allegations that Riverkeeper made
10 in three federal district court cases that the Panel centralized in the Eastern District
11 of Washington, *see* ECF 47, No. 2:13-md-02494-LRS (E.D. Wash.);

12 WHEREAS, the 2014 Agreement was submitted to the Eastern District of
13 Washington in E.D. Wash. Case Nos. 2:13-md-02494-LRS, 2:13-cv-00282-LRS,
14 2:13-cv-00418, and 2:14-cv-00030-LRS;

15 WHEREAS, the 2014 Agreement addressed Riverkeeper’s allegations that
16 the Corps discharged pollutants without NPDES permits from eight dams,
17 including The Dalles dam, John Day dam and the McNary dam, allegedly in
18 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a);

19 WHEREAS, the 2014 Agreement requires, *inter alia*, that the Corps apply
20 for NPDES permits for discharges from the eight dams and includes a covenant

1 from Riverkeeper to not sue the Corps for unpermitted discharges from the eight
2 dams for a seven year period;

3 WHEREAS, the 2014 Agreement requires, *inter alia*, that the Corps submit
4 written requests to EPA and/or Oregon DEQ every twelve months, “requesting an
5 update on the status of each permit application that remains pending”;

6 WHEREAS, the 2014 Agreement also requires, *inter alia*, that the Corps
7 “notify [Riverkeeper] of those events that the Corps reports to the National
8 Response Center” pursuant to the Corps’ SPCC plans;

9 WHEREAS, the 2014 Agreement also requires, *inter alia*, that the Corps
10 prepare a final regional Oil Accountability Plan (“OAP”) for the Corps’
11 Northwestern Division, apply that OAP to each of the eight dams, and annually
12 make publicly available on a Corps website “reports that include a description of
13 the results of the monitoring and any assessments” of oils and greases under the
14 OAPs for the eight dams;

15 WHEREAS, the 2014 Agreement also provides that the Corps’ obligations
16 to submit requests to EPA or to Oregon DEQ, to notify Riverkeeper of those events
17 that the Corps reports to the National Response Center pursuant to the Corps’
18 SPCC plans, and to make available the reports regarding oils and greases “shall
19 terminate for each Dam or portion thereof when the Corps obtains NPDES permit
20 coverage that addresses discharges of pollutants associated with operations at that

1 Dam or portion thereof";

2 WHEREAS, EPA has issued NPDES permits for discharges to waters in the
3 State of Washington from all eight dams at issue in the 2014 Agreement, and the
4 Corps' obligations under the 2014 Agreement regarding the dams or portions
5 thereof for which the Corps obtained permit coverage have terminated;¹

6 WHEREAS, the Oregon DEQ has not yet issued NPDES permits for the
7 Oregon portions of the John Day and McNary dams, and so the Corps' obligations
8 under the 2014 Agreement have not yet terminated for the Oregon portions of
9 those dams;

10 WHEREAS, the Parties intend that the terms of this Settlement Agreement
11 supersede the terms contained in the 2014 Agreement regarding the Oregon
12 portions of the John Day and McNary dams, and, accordingly, on the Effective
13 Date of this Settlement Agreement, the terms of the 2014 Agreement shall be null
14 and void regarding, and shall no longer apply to, the Oregon portions of those
15 dams;

16

17 ¹ Specifically, the Corps' obligations under the 2014 Agreement have terminated
18 for: The Dalles dam; the Ice Harbor dam; the Lower Monumental Dam; the Little
19 Goose Dam; the Lower Granite Dam; the Washington portions of the Bonneville
20 Dam; the Washington portions of the John Day dam; and the Washington portions
of the McNary dam. Riverkeeper alleged that portions of the Bonneville, John Day,
and McNary dams also discharge to waters within the State of Oregon.

1 WHEREAS, Riverkeeper and the Corps have agreed to this Settlement
2 Agreement without any admission of fact or law;

3 WHEREAS, Riverkeeper and the Corps consider this Settlement Agreement
4 to be a fair, adequate, and reasonable resolution of the claims that were or
5 potentially could have been raised in the case(s); and

6 WHEREAS, Riverkeeper and the Corps believe that it is in the interest of
7 the public, the Parties, and judicial economy to enter into this Settlement
8 Agreement rather than engage in protracted litigation;

9 NOW THEREFORE, the Parties, by and through their undersigned counsel,
10 hereby agree upon the following settlement terms and conditions:

11 I. Parties Bound.

12 1. This Settlement Agreement applies to, is binding upon, and inures to
13 the benefit of the Parties and their successors, assigns, and designees.

14 II. The Corps' Obligations.

15 2. The Corps shall diligently respond to any requests from Oregon DEQ
16 related to the pending John Day dam and McNary dam NPDES permit
17 applications. Starting six months from the Effective Date of this Agreement, the
18 Corps shall submit written requests to Oregon DEQ every six months, with copies
19 provided to Riverkeeper at the same time, for an update on the status of each of
20 those permit applications. The Corps' obligations to submit such requests shall

1 terminate when Oregon DEQ takes final action on the applicable NPDES permit
2 application or when Riverkeeper commences an action pursuant to paragraph 8
3 below, whichever is earlier.

4 3. The Corps shall notify Riverkeeper of those events at the Oregon
5 portions of the John Day and McNary dams that the Corps reports to the National
6 Response Center pursuant to the Corps' SPCC plans for those dams. The Corps'
7 obligations to provide such notifications for each dam shall terminate when the
8 Corps obtains NPDES permit coverage that addresses discharges of pollutants
9 from sources at that dam located in Oregon or when Riverkeeper commences an
10 action pursuant to paragraph 8 below, whichever is earlier. Such notifications to
11 Riverkeeper may be provided via email, and shall be made promptly and in no
12 instance later than two business days from the Corps' discovery of the event. The
13 Corps' notification to Riverkeeper shall not constitute an admission by the Corps
14 of a discharge of any pollutant in violation of the CWA or any other law.

15 4. For the Oregon portions of the John Day and McNary dams, the Corps
16 shall continue implementing the OAPs that the 2014 Agreement required the Corps
17 to develop for those dams and shall continue to make the annual reports generated
18 under the OAPs publicly available on a Corps website. Consistent with the 2014
19 Agreement, the reports shall include a description of the results of the monitoring
20 and any assessments of oils and greases under the OAPs for the John Day and

1 McNary dams. The reports may address the entirety of the John Day and McNary
2 dams even though the reports are only required to address the Oregon portions of
3 those dams. The Corps' obligations to provide such reports shall terminate when
4 the Corps obtains NPDES permit coverage that addresses discharges of pollutants
5 from sources at that dam located in Oregon or when Riverkeeper commences an
6 action pursuant to paragraph 8 below, whichever is earlier.

7 5. Within 120 days after the Corps' receipt of correct payment and
8 deposit information described below from Riverkeeper or within 120 days after the
9 Effective Date of this Settlement Agreement, whichever is later, Defendants shall
10 pay to Riverkeeper the amount of \$80,000.00 by Electronic Funds Transfer
11 ("EFT"). Riverkeeper's counsel shall provide the following payment and deposit
12 information to counsel for the Corps:

13 EFT Payable to
14 Bank name
15 Bank address
16 ABA Routing number
17 Account number
18 Name and Type (Checking or Savings) of Account
19 Taxpayer identification number.

20 Riverkeeper hereby releases any and all claims and potential claims under
any statute or other authority, including, but not limited, to 33 U.S.C. § 1365(d),
for costs of litigation, attorney fees, expert fees, court costs, and other costs or fees
accrued through the Effective Date of this Settlement Agreement in connection

1 with E.D. Wash. Case No. 4:21-CV-05152-SAB (and consolidated E.D. Wash.
2 Case No. 4:22-CV-05056-SAB).

3 6. Promptly after the Effective Date of this Settlement Agreement, the
4 Parties shall file a notice with the Eastern District of Washington in Case Nos.
5 2:13-md-02494-LRS, 2:13-cv-00282-LRS, 2:13-cv-00418, and 2:14-cv-00030-
6 LRS that: (a) the Corps has obtained NPDES permits for discharges from, and so
7 the Corps' obligations under the 2014 Agreement have terminated for, The Dalles
8 dam, the Ice Harbor dam, the Lower Monumental Dam, the Little Goose Dam, the
9 Lower Granite Dam, the Washington portions of the Bonneville Dam, the
10 Washington portions of the John Day dam, and the Washington portions of the
11 McNary dam; and (b) the terms of this Settlement Agreement supersede the terms
12 contained in the 2014 Agreement regarding the Oregon portions of the John Day
13 and McNary dams, and, accordingly, as of the Effective Date of this Settlement
14 Agreement, the terms of the 2014 Agreement shall be null and void regarding, and
15 shall no longer apply to, the Oregon portions of those dams.

16 III. Dismissal of Claims and Releases.

17 7. The Parties agree that this Settlement Agreement represents a good
18 faith compromise of all matters addressed in this Settlement Agreement. Upon
19 execution of this Settlement Agreement, the Parties shall file an agreed-upon joint
20 motion and proposed order providing that E.D. Wash. Case No. 4:21-cv-05152-

1 SAB (and consolidated E.D. Wash. Case No. 4:22-cv-05056-SAB) shall be
2 dismissed without prejudice pursuant to Fed. R. Civ. P. 41, subject to the
3 provisions of this Settlement Agreement. This Settlement Agreement shall be null
4 and void if the Court does not dismiss E.D. Wash. Case No. 4:21-cv-05152-SAB
5 (and consolidated E.D. Wash. Case No. 4:22-cv-05056-SAB) in accordance with
6 the terms set forth in the agreed-upon joint motion and proposed order.

7 8. Notwithstanding dismissal of this case without prejudice, Riverkeeper
8 hereby releases, discharges and covenants not to assert (by way of commencement
9 or refiling of any action, the joinder of the Corps in an existing action, or in any
10 other fashion) any and all claims, causes of action, suits or demands of any kind in
11 law or in equity regarding alleged unpermitted discharges of pollutants from
12 sources located in Oregon at the John Day and McNary dams until either: (i) the
13 Corps obtains NPDES permit coverage that addresses discharges of pollutants
14 from sources located in Oregon at the applicable dam; or (ii) March 31, 2025,
15 whichever is earlier. In the event that Riverkeeper commences any action against
16 the Corps after the passage of time under the preceding clause (ii), any remaining
17 obligations of the Corps under this Settlement Agreement shall terminate.

18 IV. Force Majeure.

19 9. The possibility exists that circumstances outside the reasonable
20 control of the Corps could delay compliance with the timetables set forth in this

1 Settlement Agreement. Such circumstances include, but are not limited to,
2 sufficient funds not being appropriated as requested, the unavailability of
3 appropriated funds for expenditure, government shutdown, pandemic, and
4 significant events that are outside of normal fluctuations in dam operations and that
5 require an immediate and/or time-consuming response by the Corps, including, but
6 not limited to, significant events related to electrical power needs, flow
7 augmentation actions, or actual or potential flooding. Should a delay occur due to
8 such circumstances, then any resulting failure to meet the deadlines or other terms
9 set forth in this Settlement Agreement shall not constitute a failure to comply with
10 those deadlines or other terms, and any deadlines so affected shall be extended one
11 day for each day of the delay. The Corps will provide Riverkeeper with reasonable
12 notice in the event that the Corps invokes this Force Majeure term. Any dispute
13 regarding invocation or the applicability of this provision shall be resolved in
14 accordance with the Dispute Resolution provisions of Section V below.

15 V. Dispute Resolution.

16 10. The Parties agree that efforts shall be made to resolve any future
17 dispute arising out of this Settlement Agreement (the “Dispute”) in accordance
18 with the procedures specified below.

19 (a) Negotiation. In the event of a disagreement between
20 Riverkeeper and the Corps concerning the interpretation or performance of any

1 aspect of this Settlement Agreement, the dissatisfied Party shall provide the other
2 Party with written notice of the Dispute and a request for informal negotiations.
3 The Parties shall meet and confer in a good faith effort to attempt to resolve the
4 Dispute within thirty (30) days of receipt of the written notice or such time
5 thereafter as is mutually agreed.

6 (b) Petition for Judicial Resolution. If the Parties are unable to
7 resolve the Dispute informally within thirty (30) days of receipt of the written
8 notice or such time thereafter as is mutually agreed, then either Riverkeeper or the
9 Corps may petition the Court to resolve the Dispute. The Parties shall follow the
10 motion practice procedures prescribed by the Federal Rules of Civil Procedure and
11 the Local Rules for the District Court for the Eastern District of Washington in
12 presenting the Dispute to the Court, and a Party's response to a petition under this
13 provision may include a cross-motion under Federal Rule of Civil Procedure 60.
14 The Court shall retain jurisdiction over this matter for the sole purpose of resolving
15 those disputes over which Riverkeeper or the Corps may petition the Court. *See*
16 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Notwithstanding
17 any other provision of this Settlement Agreement, however, Riverkeeper and the
18 Corps expressly preserve, and do not waive or limit, any and all defenses relating
19 to such litigation, including any that may exist under Federal Rule of Civil
20 Procedure 60. Contempt of court is not an available remedy under this Settlement

Agreement.

(c) Confidentiality of Negotiations and Mediation. All informal negotiations and related communications and proceedings conducted pursuant to subparagraph (a) of this paragraph 10 are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law.

VI. Miscellaneous Provisions.

11. Any notice required or made with respect to this Settlement Agreement shall be in writing (including email) and shall be effective upon receipt. Any notice or other documents required pursuant to this Settlement Agreement shall be sent to the following contact persons:

For Riverkeeper:

Miles Johnson
Columbia Riverkeeper
P.O. Box 950
Hood River, Oregon 97031
Phone: (541) 490-0487
Email: miles@columbiariverkeeper.org

And

Brian Alan Knutsen
Kampmeier & Knutsen, PLLC
1300 S.E. Stark Street, Suite 202
Portland, Oregon 97214
Phone: (503) 841-6515
Email: brian@kampmeierknutsen.com

1 For the Corps:

2 U.S. Army Corps of Engineers
3 Northwestern Division
4 Attn: Office of Counsel
1201 NE Lloyd Blvd., Suite 400
Portland, Oregon 97232

5 Mark A. Nitczynski
U.S. Department of Justice
6 Environment & Natural Res. Division
999 18th Street
7 South Terrace, Suite 370
Denver, CO 80202
Phone: (303) 844-1498
Email: mark.nitczynski@usdoj.gov

9 And

10 Chief, Environmental Defense Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
13 MailProcessing_EDS.ENRD@usdoj.gov

14 Upon written notice to the other Parties, any Party may designate a successor
15 contact person for any matter relating to this Settlement Agreement.

16 12. Upon fulfillment of the Corps' obligations under this Settlement
17 Agreement, the Corps' obligations under this Settlement Agreement shall
18 terminate.

19 13 Except as expressly provided herein, nothing in this Settlement
20 Agreement shall be construed to limit or modify the discretion accorded to the

1 Corps by any laws, including but not limited to the CWA or any other statutes, or
2 any principles of administrative law.

3 14. Nothing in this Settlement Agreement shall constitute an admission or
4 evidence of any fact, wrongdoing, misconduct, or liability on the part of the Corps,
5 its officers or any person affiliated with it. The provisions, terms and conditions of
6 this Settlement Agreement shall not be admissible in any judicial or administrative
7 proceeding except: (i) in the Corps' defense of a claim, cause of action, suit or
8 demand asserted by Riverkeeper pursuant to paragraph 8 above; or (ii) in support
9 or defense of a petition to the Court submitted by either Party pursuant to
10 paragraph 10(b) above.

11 15. Riverkeeper recognizes that the Corps' performance under this
12 Settlement Agreement is subject to fiscal and procurement laws and regulations of
13 the United States which include, but are not limited to, the Anti-Deficiency Act, 31
14 U.S.C. § 1341, et seq., and nothing in this Settlement Agreement shall be
15 interpreted as or constitute a commitment or requirement that the Corps obligate or
16 pay funds in contravention of the Anti-Deficiency Act. In addition, nothing in this
17 Settlement Agreement shall be interpreted as or constitute a commitment or
18 requirement that the Corps take actions in contravention of the Administrative
19 Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the CWA, the authorizing
20 legislation for the John Day and McNary dams (Flood Control Act of 1950, Public

1 Law 81-516, and Rivers and Harbors Act of 1945, Public Law 79-14,
2 respectively), or any other substantive or procedural law or regulation.

3 16. If, subsequent to the Effective Date of this Settlement Agreement, any
4 change in the law or legal requirement goes into effect that alters or relieves the
5 Corps' obligations concerning matters addressed in this Settlement Agreement,
6 then the Settlement Agreement shall be amended to conform to such changes. Any
7 dispute regarding invocation or the applicability of this provision shall be resolved
8 in accordance with the Dispute Resolution provisions of Section V above.

9 17. Except as set forth in this Settlement Agreement, the Parties reserve
10 and do not waive any and all other legal rights and remedies.

11 18. This Settlement Agreement shall be governed and construed under the
12 laws of the United States.

13 19. This Settlement Agreement constitutes the final, complete and
14 exclusive agreement and understanding between Riverkeeper and the Corps with
15 respect to the matters addressed in this Settlement Agreement. There are no
16 representations, agreements or understandings relating to this settlement other than
17 those expressly contained in this Settlement Agreement.

18 20. The Effective Date of this Settlement Agreement shall be the date
19 upon which the Court enters the order of dismissal proposed by the Parties.

20 21. The Parties may, in a written document signed by all of the Parties,

1 modify this Settlement Agreement.

2 22. The Parties hereby agree that any and all rules of construction to the
3 effect that ambiguity is construed against the drafting party shall be inapplicable in
4 any dispute concerning the terms, meaning, or interpretation of this Settlement
5 Agreement.

6 23. Each undersigned representative of the Parties certifies that he or she
7 is fully authorized by the Party to enter into this Settlement Agreement and to bind
8 such Party to comply with the terms and conditions of this Settlement Agreement.

9 24. This Settlement Agreement may be executed in any number of
10 counterparts, each of which shall be deemed to constitute an original, and such
11 counterparts shall together constitute one and the same Settlement Agreement. The
12 execution of one counterpart by any Party shall have the same force and effect as if
13 that Party had signed all other counterparts.

14 25. Nothing in this Settlement Agreement shall be construed to make any
15 person or entity not executing this Settlement Agreement a third-party beneficiary
16 to this Settlement Agreement.

17 WHEREFORE, after having reviewed the terms and conditions of this
18 Settlement Agreement, Plaintiff Columbia Riverkeeper and the United States on
19 behalf of Defendants hereby consent and agree to the terms and conditions of this
20 Settlement Agreement.

1 DATE:

2 3-15-23



3 BRIAN A. KNUTSEN
4 EMMA A.O. BRUDEN
5 Kampmeier & Knutsen, PLLC
6 1300 S.E. Stark Street, Suite 202
7 Portland, OR 97214
8 Phone: (503) 841-6515
9 Email: brian@kampmeierknutsen.com
Email: emma@kampmeierknutsen.com

10 MILES JOHNSON
11 Columbia Riverkeeper
12 P.O. Box 950
13 Hood River, Oregon 97031
14 Phone: (541) 490-0487
15 Email: miles@columbiariverkeeper.org

16 ATTORNEYS FOR COLUMBIA
17 RIVERKEEPER

18 TODD KIM
19 Assistant Attorney General
20 United States Department of Justice
Environment & Natural Resources Division

15 DATE:

16 3/15/2023


17 MARK A. NITCZYNSKI
18 999 18th Street
19 South Terrace; Suite 370
20 Denver, CO 80202
(303) 844-1498

21 JEFFREY HAMMONS
22 United States Department of Justice
23 Environment & Natural Resources Division
24 Environmental Defense Section
P.O. Box 7611

1 Washington, DC 20044
2 Phone: (202) 514-5452
3 Email: jeffrey.hammons@usdoj.gov

4 ATTORNEYS FOR U.S. ARMY CORPS
5 OF ENGINEERS AND LIEUTENANT
6 GENERAL SCOTT A. SPELLMON